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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

AGUSTIN CORONA,

Defendant and Appellant.

B294759

(Los Angeles County  
Super. Ct. No. 8PH06429)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Kawahara, Commissioner.  
Affirmed.

William G. Holzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, David E. Madeo and

William H. Shin, Deputy Attorneys General, for Plaintiff and Respondent.

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## **INTRODUCTION**

The trial court revoked appellant Agustin Corona's parole following a contested hearing, finding he had engaged in domestic violence. On appeal, appellant contends the court abused its discretion by admitting inadmissible hearsay statements of the alleged victim. We disagree and therefore affirm.

## **BACKGROUND**

### *A. The Petition for Revocation of Parole*

In January 2014, appellant was convicted of second degree robbery, and sentenced to five years in state prison. He was released on parole in November 2017. In October 2018, the Department of Corrections and Rehabilitation filed a petition for parole revocation, alleging he had violated the conditions of his parole by battering his girlfriend.

### *B. The Hearing*

#### *1. The Prosecution Evidence*

Long Beach Police Officer Paige White testified that on October 10, 2018, she responded to a domestic violence call at the home of Paula Ulloa, who was then appellant's

girlfriend. Within minutes of receiving the call, White arrived at the scene to find that other officers had already detained appellant and that Ulloa was outside her apartment. Ulloa was crying “a lot,” and “had to pause before she would answer [White’s questions], because she was crying.”

White could not recall the specific questions she put to Ulloa but testified she would normally ask, “What happened?” According to White, Ulloa reported that appellant had accused her of having sex for money. When Ulloa responded by shoving appellant, he said, “Oh, you want to make this violent?” Appellant then pushed Ulloa to the ground and began strangling her and slapping her face and arm. Ulloa punched appellant, but he would not get off her. Ultimately, Ulloa asked appellant to get off her, and he did. The police arrived soon after.

White noticed small lacerations on the left side of Ulloa’s neck and on her right elbow. Based on her prior experience investigating domestic violence incidents, White opined that Ulloa’s injuries were consistent with a domestic assault. As discussed below, Ulloa did not testify at the hearing.

## *2. The Defense Evidence*

Appellant testified on his own behalf. He claimed that on the day of the incident, Ulloa began having a “psychological medical issue.” She was “stumbling, grabbing herself, pulling her hair.” Appellant went to get Ulloa’s

medicine and found her on the floor when he came back. He then held her down and put the medicine in her mouth, and she began to calm down after a few minutes. About 15 minutes after appellant gave Ulloa the medicine, the police arrived. Appellant denied slapping or strangling Ulloa.

### *C. The Trial Court's Ruling*

Following the hearing, the trial court found that appellant had violated the terms and conditions of his parole and sustained the petition. The court found appellant's version not credible because he testified that Ulloa had calmed down before the police arrived, but White testified that Ulloa was crying profusely when she arrived. Appellant was sentenced to 180 days in county jail. He timely appealed.

## **DISCUSSION**

### *A. Background*

Appellant challenges the admission of Ulloa's statements to White, arguing they constituted inadmissible hearsay. Ulloa successfully asserted her Fifth Amendment right against self-incrimination and refused to testify. The prosecutor asked the court to compel Ulloa to testify under a grant of immunity, but the court denied this request.

At the hearing, the prosecutor sought to introduce Ulloa's statements through Officer White. Appellant objected on hearsay grounds, but the prosecutor argued that Ulloa's statements were admissible under Evidence Code

sections 1240 (spontaneous statement) and 1370 (statements relating to physical abuse).<sup>1</sup> The court overruled appellant's hearsay objection and allowed White to testify to Ulloa's statements.

### B. *Analysis*

The parties agree that parole revocation proceedings are subject to relaxed evidentiary rules, and that otherwise inadmissible hearsay may be admitted in such proceedings if it has sufficient indicia of reliability. We conclude, however, that Ulloa's statements were admissible as spontaneous statements under section 1240. We therefore need not apply the more flexible standards that govern parole revocation proceedings.

Under section 1240, "[e]vidence of a statement is not made inadmissible by the hearsay rule if the statement: [¶] (a) Purports to narrate, describe, or explain an act, condition, or event perceived by the declarant; and [¶] (b) Was made spontaneously while the declarant was under the stress of excitement caused by such perception." (§1240, subds. (a), (b).) The theory of this exception to the hearsay rule is that a statement "made spontaneously, while under the stress of excitement and with no opportunity to contrive or reflect, it is particularly likely to be truthful." (*People v. Stanphill* (2009) 170 Cal.App.4th 61, 81, italics omitted.) "As

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<sup>1</sup> Undesignated statutory references are to the Evidence Code.

explained by Wigmore, this type of out-of-court statement, because of its “superior” trustworthiness, is “*better than* is likely to be obtained from the same person upon the stand.”” (*Ibid.*)

In determining whether a statement falls within section 1240’s hearsay exception, “[t]he crucial element [is] . . . the mental state of the speaker.” (*People v. Brown* (2003) 31 Cal.4th 518, 541 (*Brown*).) “The nature of the utterance -- how long it was made after the startling incident and whether the speaker blurted it out, for example -- may be important, but solely as an indicator of the mental state of the declarant.” (*Ibid.*) “Neither lapse of time between the event and the declarations nor the fact that the declarations were elicited by questioning deprives the statements of spontaneity *if it nevertheless appears that they were made under the stress of excitement and while the reflective powers were still in abeyance.*” (*People v. Poggi* (1988) 45 Cal.3d 306, 319 (*Poggi*).)

Whether a hearsay statement qualifies as a spontaneous statement is generally a question of fact for the trial court, and its determination involves an exercise of the court’s discretion. (*People v. Merriman* (2014) 60 Cal.4th 1, 65.) We will uphold the trial court’s determination of facts if it is supported by substantial evidence and review its decision to admit the evidence for abuse of discretion. (*Ibid.*)

Appellant does not dispute that Ulloa’s statements to Officer White purported to describe an event she had perceived -- her battery by appellant. He contends, however,

that the trial court could not consider her statements spontaneous because Ulloa made the relevant statements “at least 15 minutes after the incident”<sup>2</sup> and in response to White’s questioning. We disagree.

White testified she arrived at Ulloa’s residence within minutes of receiving the domestic violence call. Ulloa was crying “a lot,” to the point of having difficulty answering White’s questions. And while White did not recall the precise questions she asked Ulloa, she would normally ask, “What happened?” This testimony tended to show that Ulloa’s statements were not in response to detailed questioning. Based on these facts, a reasonable factfinder could conclude that Ulloa’s statements were spontaneous and given under the stress of excitement. (See *Poggi, supra*, 45 Cal.3d at 319-320 [record supported finding that declarant’s statements were spontaneous even though she made them 30 minutes after attack, after she had become calm enough to speak coherently, and in response to officer’s simple questioning]; *Brown, supra*, 31 Cal.4th at 541 [trial

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<sup>2</sup> In making this contention, appellant relies solely on his own testimony that the police arrived about 15 minutes after he allegedly gave Ulloa her medicine. Officer White testified that she arrived within “minutes” of receiving the domestic violence call. The trial court was not required to credit appellant’s version of events (see *Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241 [“The trier of fact is not required to believe even uncontradicted testimony”]), and as noted, found him not credible.

court permissibly found statement made two and one-half hours after shooting to be spontaneous, where declarant was still visibly shaking and crying after having watched shooting]; *People v. Gonzalez* (2016) 246 Cal.App.4th 1358, 1371, 1372 [substantial evidence supported that declarant's statements were spontaneous even though he made them up to 12 minutes after incident, in response to officer's general questions, because he appeared to be in shock, speaking "very rapidly in broken sentences and with a high-pitched voice"] affd. (2018) 5 Cal.5th 186.) Accordingly, the trial court did not abuse its discretion in admitting Ulloa's statements.

**DISPOSITION**

The judgment is affirmed.

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MANELLA, P. J.

We concur:

WILLHITE, J.

CURREY, J.